

HOUSE BILL NO. 218

INTRODUCED BY L. SMITH, C. KNUDSEN, M. CAFERRO, D. LOGE, B. KEENAN, B. USHER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS; PROVIDING ADDITIONAL REQUIREMENTS FOR LICENSURE; INCREASING THE FREQUENCY OF ONSITE INSPECTIONS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 52-2-805 AND 52-2-810, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 52-2-805, MCA, is amended to read:

"52-2-805. Requirements for licensure -- restrictions -- rulemaking. (1) The department shall require applicants and licensees:

(a) to submit a set of fingerprints for each person associated with the program who has direct access to program participants for the purpose of conducting a criminal and child protection background check by the Montana department of justice and the federal bureau of investigation. This background investigation must include information pertaining to criminal convictions, reports of domestic violence, and substantiated child abuse or neglect of children.

(b) to maintain and to provide verification of policies of insurance in a form and in an adequate amount as determined by rule.

(2) In developing minimum standards for licensed programs, the department ~~may~~shall adopt rules that pertain to ensuring the health and safety of program participants, including:

(a) a procedure for a licensed program to report the use of a MEDICAL, CHEMICAL, OR PHYSICAL restraint or seclusion to the department within 1 business day after the day on which the use of the MEDICAL, CHEMICAL, OR PHYSICAL restraint or seclusion occurs;

(b) guidelines for written policies and procedures of the licensed program, including policies and procedures on suicide prevention and for implementation of the requirements and restrictions in subsections (3)

1 and (4);

2 (c) a procedure for the department to review and approve the licensed program's policies and
3 procedures; and

4 (d) a procedure for submitting a complaint about a licensed program to the department and a
5 requirement that each licensed program publicly post information that describes how to submit a complaint
6 about the licensed program to the department.

7 (3) A licensed program may not:

8 (a) use as a punishment, deterrent, or incentive:

9 (i) physical discipline of any means, including but not limited to hitting, dragging, shaking, biting,
10 pinching, and other forms of corporal punishment; or

11 (ii) deprivation of basic necessity, including education;

12 (b) engage in abusive, humiliating, degrading, or traumatizing actions against a youth; or

13 (c) admit a youth who:

14 (i) is under 12 years of age; or

15 (ii) has been assessed by a licensed mental health professional as seriously emotionally
16 disturbed, unless the youth-ASSESSMENT does not require care in a licensed health facility-INDICATE A NEED FOR
17 RESIDENTIAL OR INPATIENT BEHAVIORAL HEALTH TREATMENT and the department has certified that the program
18 meets the standards to provide mental health treatment services for a child having a serious emotional
19 disturbance pursuant to 52-2-310.; OR

20 (D) SEXUALLY ABUSE, EXPLOIT, OR HARASS AN ENROLLED YOUTH, INCLUDING BUT NOT LIMITED TO:

21 (I) REQUIRING THAT A YOUTH REPORT SEXUAL HISTORY OR SEXUAL ASSAULTS IN GROUP OR PRIVATE
22 SETTINGS; AND

23 (II) NONCONSENSUAL PHYSICAL CONTACT THAT HAS NO THERAPEUTIC PURPOSE.

24 (4) A licensed program must:

25 (a) allow a parent or guardian to remove a youth from the licensed program; and

26 (b) unless otherwise prohibited by law or court order, facilitate weekly confidential VIDEO
27 communication between a youth and the youth's family, including parents, guardians, foster parents, and
28 siblings, as applicable.

1 (5) (A) A LICENSED PROGRAM SHALL PROVIDE A TELEPHONE THAT IS READILY AVAILABLE TO ENROLLED
2 PARTICIPANTS 24 HOURS A DAY.

3 (B) A LICENSED PROGRAM MAY NOT MONITOR OR RECORD TELEPHONE CALLS BY ANY TECHNOLOGICAL OR
4 PHYSICAL MEANS, INCLUDING BUT NOT LIMITED TO USING CALL RECORDING SOFTWARE, LISTENING TO A LIVE CALL FROM
5 ANOTHER DEVICE, AND THE PHYSICAL PRESENCE OF PROGRAM STAFF OR OFFICIALS IN THE AREA WHERE THE PHONE IS
6 PLACED.

7 (C) THE TELEPHONE MUST HAVE A LEGIBLE SIGN OF AT LEAST 8 1/2 X 11 INCHES POSTED NEXT TO THE
8 TELEPHONE WITH:

9 (i) THE PHYSICAL ADDRESS OF THE PROGRAM;

10 (ii) THE TELEPHONE NUMBER FOR THE STATE CHILD ABUSE HOTLINE AND TELEPHONE NUMBERS FOR THE
11 NEAREST HOSPITAL, POLICE DEPARTMENT, FIRE DEPARTMENT, AND AMBULANCE SERVICE; AND

12 (iii) A NOTICE THAT READS: "IT IS A VIOLATION OF STATE LAW FOR PROGRAM STAFF TO MONITOR OR
13 RECORD CALLS ON THIS TELEPHONE BY ANY MEANS."

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15 **Section 2.** Section 52-2-810, MCA, is amended to read:

16 **"52-2-810. Periodic visits to facilities by department -- investigations -- consultation with**
17 **licensees and registrants.** (1) The department or its authorized representative shall make periodic visits to all
18 licensed programs to ensure that minimum standards are maintained.

19 (2) The department ~~may~~SHALL investigate and inspect the conditions and qualifications of any
20 program seeking or holding a license under the provisions of this part.

21 (3) (a) The department shall conduct an onsite inspection of:

22 ~~(a)~~(i) each program applying for a license; and

23 ~~(b)~~(ii) each licensed program at least once ~~every 3 years~~ each calendar quarter.

24 ~~(b)~~ At least two of the THE quarterly inspections of a licensed program in each calendar year must
25 be unannounced.

26 (C) ALL YOUTH ENROLLED IN THE PROGRAM MUST BE INTERVIEWED BY DEPARTMENT STAFF DURING EACH
27 INSPECTION. PROGRAM STAFF MAY NOT BE PRESENT DURING THESE INTERVIEWS.

28 ~~(e)~~(D) All records of a licensed program must be open to inspection by the department at all

1 reasonable times.

2 (4) ~~Upon~~On request of the department, the state fire prevention and investigation section of the
3 department of justice shall inspect any program for which a license is applied for or issued and shall report its
4 findings to the department.

5 (5) (A) IF THE DEPARTMENT SUSPECTS ABUSE, NEGLECT, OR MISTREATMENT OF AN ENROLLED YOUTH,
6 THE DEPARTMENT SHALL INTERVIEW THE YOUTH AND WITNESSES WITHOUT PROGRAM STAFF PRESENT.

7 (B) A YOUTH MAY CHOOSE TO HAVE A SUPPORTIVE ADULT, INCLUDING A PARENT, GUARDIAN, OR
8 ATTORNEY, PRESENT WHEN PARTICIPATING IN AN INTERVIEW PURSUANT TO SUBSECTION (5)(A). BEFORE BEGINNING THE
9 INTERVIEW, THE DEPARTMENT SHALL INFORM THE YOUTH OF THE YOUTH'S RIGHT TO HAVE A SUPPORTIVE ADULT
10 PRESENT DURING THE INTERVIEW."

11 - END -